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July 5, 1991

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Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

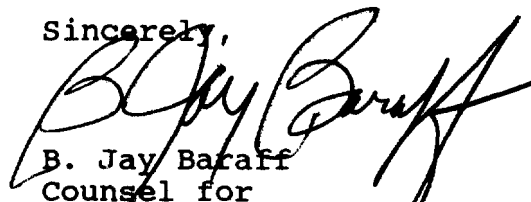
Re: Channel 54, Slidell, Louisiana
File Nos. BPCT-900518KO
BPCT-900726KG

Dear Ms. Searcy:

Transmitted herewith, on behalf of Caroline K. Powley, d/b/a Unicorn Slidell, applicant in the above-captioned proceeding, is an original and three copies of a Supplement to its Motion to Dismiss or Deny the application of Trudy M. Mitchell.

Should any questions arise concerning this matter, kindly communicate with the undersigned.

Sincerely,


B. Jay Baraff
Counsel for
Caroline K. Powley d/b/a
Unicorn Slidell

Enclosures

AEA:sj
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	
)	
CAROLINE K. POWLEY)	
d/b/a UNICORN SLIDELL)	File No. BPCT-900518KO
Slidell, Louisiana)	
)	
TRUDY M. MITCHELL)	File No. BPCT-900726KG
Slidell, Louisiana)	
)	
For a Construction Permit for a)	
new UHF Commercial Television)	
Station to Operate on Channel 54,)	
Slidell, Louisiana)	

To the Chief, Mass Media Bureau

**SUPPLEMENT TO
MOTION TO DISMISS OR DENY**

Caroline K. Powley d/b/a Unicorn Slidell ("Unicorn"), applicant for a construction permit to build a new UHF Commercial Television Station to operate on Channel 54, Slidell, Louisiana, by her attorneys, hereby supplements her Motion to Dismiss or Deny the above-captioned application of Trudy M. Mitchell. In support, the following is respectfully shown.

1. On June 25, 1991, Unicorn filed a Motion to Dismiss or Deny Mitchell's application demonstrating, among other things, that the technical proposal was in violation of the separation requirements of Sections 73.610(d) and 73.698 of the Commission's Rules. As filed, Mitchell proposed to locate on the existing tower presently used by WCCL(TV), Channel 49, New Orleans, Louisiana. However, the Commission's spacing rules require a 31.4 kilometer separation between stations operating on Channels 49 and 54. Mitchell's application provided for no separation between the

proposed Channel 54 facility and the existing Channel 49 facility, resulting in 100% short spacing. Moreover, Mitchell's application neither recognized the need nor set forth a request for waiver of the requirements of those rules. Thus, Mitchell's application as tendered was patently defective and should not have been accepted for filing pursuant to Section 73.3566(a) of the Commission's rules. As such, Unicorn asserted that the acceptance of Mitchell's application for filing was clearly inadvertent and Section 73.3566(a) requires that it should be immediately dismissed.

2. On June 14, 1991, Mitchell tendered an amendment to the application specifying, among other things, a new transmitter site. By public notice issued June 21, 1991 (Report No. 15020), that amendment was accepted for filing. By an affirmative answer to question 4 of Section V-C of the application comprising the amendment, it is represented that the amendment itself is to correct previous site coordinates. However, by no stretch of the imagination is this a "correction." The amendment proposes a wholly new transmitter site almost 20 miles away and a technical proposal to accommodate the relocation. Accordingly, the proposed amendment does not rectify the defective nature of the application when it was filed, or in any way militates against its inadvertent and impermissible acceptance for filing.¹

¹ As is the case with the underlying application itself, Mitchell's amendment is replete with deficiencies and errors rendering it substantially incomplete and unacceptable. Various engineering exhibits referenced in the amendment are not attached, and those that are are patently inconsistent with the rules.

3. Reduced to its essence, Mitchell's application, when tendered, was hopelessly defective; should not have been accepted for filing; and cannot in any respect be considered a "timely filed" application entitled to comparative consideration with Unicorn. Commission policy has consistently required that, where a cut-off period is established, applications must be tendered in substantially complete form before the cut-off date in order to be entitled to comparative considerations, and that purportedly curative amendments submitted after that cut-off date do not effectively correct a defective application that was not substantially complete as of the original date of filing. See Advance, Inc., 88 FCC 2d 100, 107 (1981), recon. denied, 89 FCC 2d 177 (1982). Having failed to tender an application in any way sufficiently complete prior to the cut-off date established in this proceeding,² the Commission, in accordance with binding precedent, should immediately rescind its inadvertent acceptance of the original application, dismiss it as unacceptable for filing,

Moreover, and most importantly, the amendment does not contain the requisite certification that the transmitter site proposed is in fact available to her nor is there any indication that any person was contacted to obtain the requisite reasonable assurance of its availability. In fact, the tower proposed is part of an AM directional array, yet no information in that regard is contained in the amendment. See Section V-C, Item 8 of Mitchell's amendment.

² As demonstrated in Unicorn's Motion to Dismiss or Deny and in addition to the technical deficiencies discussed herein, Mitchell's underlying application cannot be considered timely filed prior to the applicable cut-off date due to her non-compliance with the Commission's rules with respect to filing fees. See Section 1.1114(a)(2).

and immediately return the instant tendered amendment. Such action will thereby remove any obstacle to immediate and favorable consideration of Unicorn's application, which should then be granted in the clearest public interest of facilitating the expeditious commencement of a new commercial television service at Slidell, Louisiana.

Respectfully submitted,

CAROLINE K. POWLEY d/b/a
UNICORN SLIDELL

By: B. Jay Baraff

B. JAY BARAFF

By: Alan E. Aronowitz

ALAN E. ARONOWITZ
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July 5, 1991

CERTIFICATE OF SERVICE

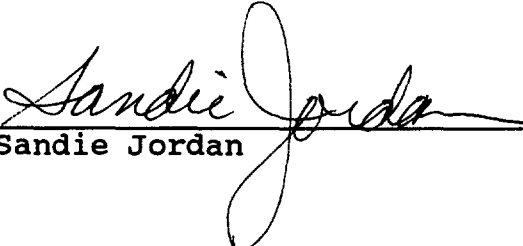
I, Sandie Jordan, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P.C., certify that on this 5th day of July, 1991, a copy of the foregoing Supplement to Motion to Dismiss or Deny was mailed, first-class U.S. mail, postage prepaid to:

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Ms. Trudy M. Mitchell
18100 Commission Road
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Sandie Jordan

* Hand Delivered

AEA:sj

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